

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Dave Dubay,

Complainant,
vs.

ORDER OF DISMISSAL

Sheriff Gary Menssen,

Respondent.

On October 27, 2010, Dave Dubay filed a Complaint with the Office of Administrative Hearings alleging Watonwan County Sheriff Gary Menssen violated Minn. Stat. § 211B.09 by appearing at a debate in his sheriff's uniform.

The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on October 20, 2010, under Minnesota Statutes § 211B.33. A copy of the Complaint was sent by U.S. Mail to the Respondent the same day.

After reviewing the Complaint and supporting materials, the Administrative Law Judge finds that the Complaint does not set forth a claim against Sheriff Mensenn, that if proven, would constitute a violation of Minn. Stat. § 211B.09.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS HEREBY ORDERED:

That the Complaint filed by Dave Dubay against Sheriff Gary Menssen is **DISMISSED**.

Dated: October 29, 2010

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

The Complainant, Dave Dubay, is a candidate for Watonwan County Sheriff in the November 2, 2010, general election. The Respondent, Gary Menssen, is the incumbent Watonwan County Sheriff and is seeking reelection. The Complaint alleges that Sheriff Menssen violated Minn. Stat. § 211B.09 by appearing at two candidates' debates in his county-issued sheriff's uniform.

Minn. Stat. § 211B.09 provides as follows:

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. A political subdivision may not impose or enforce additional limitations on the political activities of its employees.

In order to allege a *prima facie* violation of Minn. Stat. § 211B.09, the Complainant must put forward facts that would support finding the Respondent used his authority or influence to "compel" persons to become members of a political organization, pay political contributions, or take part in a political activity. The Merriam Webster Dictionary defines "compel" to mean "to drive or urge forcefully or irresistibly;" or "to cause to do or occur by overwhelming pressure."¹

The Complainant's allegation that Sheriff Menssen appeared in full uniform at the debates is insufficient to support a *prima facie* violation of Minn. Stat. § 211B.09 absent some evidence that Sheriff Menssen compelled persons to take part in political activity. The Complainant has alleged no facts to support finding that Sheriff Menssen used forceful or overwhelming pressure to compel members of the debate audience to take part in some political activity. Even if it is assumed that the phrase "to take part in a political activity" includes the act of voting, the Complainant has failed to put forward any facts that would support finding the Respondent used his authority or influence as a public employee to *compel* people to vote for him. This allegation is dismissed.

¹ Merriam Webster Online Dictionary.

The Complainant has also alleged violations of the Hatch Act.² The Fair Campaign Hearing process is limited to alleged violations of Minnesota Statutes Chapters 211A and 211B. The Administrative Law Judge has no jurisdiction to consider violations of the Hatch Act.

The Complaint is dismissed because it fails to allege a *prima facie* violation of Minn. Stat. § 211B.09 by Respondent Sheriff Menssen.

B.L.N.

² Presumably the Complainant is referring to the federal Hatch Act of 1939, as amended, which applies to political campaign activities by federal employees and certain employees of state and local governments.